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Sten Erik Hakanson  
IMI Cornelius Inc.  
One Cornelius Place  
Anoka, Minnesota 55303-6234

In re Application of	:	
BARKER et al.	:	DECISION ON
Application No.: 09/980,912	:	PETITION UNDER
PCT No.: PCT/GB00/01732	:	37 CFR 1.137(b)
Int. Filing Date: 05 May 2000	:	AND
Priority Date: 08 May 1999	:	37 CFR 1.42
Attorney Docket No.: 2A0120.USD	:	
For: DOSING VALVE WITH FLOW RATE	:	
SENSOR FOR A BEVERAGE	:	
DISPENSER	:	

This is in response to the petition under 37 CFR 1.137(b) filed 01 April 2003 to revive the above-identified application. The \$1300.00 petition fee has been paid.

### **BACKGROUND**

On 05 May 2000, applicants filed international application PCT/GB00/01732, which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 16 November 2000. A Demand for international preliminary examination electing the United States was filed prior to the expiration of 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 08 November 2001.

On 08 November 2001, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; a preliminary amendment, and an unexecuted declaration.

On 06 February 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 15 November 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 06 February 2002 within the time period set therein.

On 01 April 2003, applicants filed the present petition under 37 CFR 1.137(b) which was accompanied by an executed declaration. The declaration is executed by: Keith James Heyes; Martin Stanley Johnson; Steven Maulder; Phillip Andrew Simmons as inventors; and Linda Barker on behalf of deceased inventor, Paul Barker.

### DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Items (2) - (4) have been satisfied.

Regarding item (1) above, the application file reveals that a proper response should include the proper papers and fees which meet the requirements of 35 U.S.C. 371 for entry into the national stage in the United States. However, an acceptable signed oath/declaration of the inventor(s) (see below) was not furnished; therefore, all of the requirements of 37 CFR 1.137(b) for a complete response has not been fulfilled and the application remains ABANDONED.

#### *Declaration of the Inventors under 37 CFR 1.42*

A review of the declaration filed 01 April 2003 reveals that Linda Barker has signed the declaration on behalf of deceased inventor, Paul Barker.

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

The declaration submitted on 01 April 2003 was executed by Linda Barker for the deceased inventor, Paul Barker. However, the declaration does not state the relationship of Linda Barker to the deceased inventor. Absent a statement that the signing heir is the sole heir or legal representative (executor) of the deceased inventor, the declaration cannot be accepted under 37 CFR 1.42.

In addition, it is noted that revised 37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath

or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to revised 37 CFR 1.497(b)(2), in addition to the residence, citizenship, and post office address of the deceased inventor, the declaration must also provide this information (residence, citizenship, and post office address) for the signing heir. The declaration filed on 01 April 2003 provides the residence, citizenship, and post office address for only one individual and it is unclear whether this information is for the heir or the deceased inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(b)(2).

### CONCLUSION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

A proper response must include a declaration in accordance with 37 CFR 1.497(a) and (b) and 37 CFR 1.42.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Anthony Smith  
Attorney-Advisor  
Office of PCT Legal Administration  
Tel: (703) 308-6314  
Fax: (703) 308-6459